



cmt., and that Rule 7.5 of the Local Rules of Court requires a party to submit a brief in support “[w]ithin fourteen (14) days after the filing of any motion,” see LOCAL RULE OF COURT 7.5, and the court finding that Dallas’s identification of Rule 12(b)(6) as a ground for dismissal in his amended motion (Doc. 9) to dismiss and elaboration of his 12(b)(6) arguments in his brief (Doc. 11) in support provide ample notice to Colonial Park, and the court therefore rejecting Colonial Park’s contention that Dallas has waived his 12(b)(6) arguments under Rule 7(b)(1)(B),<sup>1</sup> it is hereby ORDERED that:

1. Colonial Park shall file a supplemental brief in opposition to Dallas’s amended motion (Doc. 9) to dismiss, addressing Dallas’s arguments for dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on or before **Friday, May 20, 2016**. (See Docs. 9, 11).

---

<sup>1</sup> Dallas’s motion (Doc. 7) to dismiss and amended motion (Doc. 9) to dismiss fell outside of the prescribed time to serve a responsive pleading or Rule 12 motion. See FED. R. CIV. P. 12. District courts have discretion to allow untimely responses in the absence of a motion for default judgment. See Breland v. ATC Viacom, Inc., 212 F.R.D. 475, 477 (E.D. Pa. 2002) (collecting cases); cf. Metro. Cas. Ins. Co. v. Combs, No. 4:13-CV-1813, 2014 WL 988452, at \*3 (E.D. Mo. Mar. 13, 2014); Lagana v. Kmart Corp., No. 97-5911, 1998 WL 372347, at \*3 (E.D. Pa. June 19, 1998). The court notes that Dallas failed to seek leave of court to file his amended motion (Doc. 9) to dismiss, wherein he newly asserts lack of subject matter jurisdiction under Rule 12(b)(1). As the parties have briefed the merits of this non-waivable jurisdictional challenge, the court will consider the amended motion (Doc. 9) to dismiss in its entirety and deny Dallas’s original motion (Doc. 7) to dismiss as moot. See FED. R. CIV. P. 12(h)(3).

2. Failure to comply with paragraph 1 may result in Dallas's motion (Doc. 9) to dismiss under Rule 12(b)(6) being deemed unopposed. See LOCAL RULE OF COURT 7.6; D'Angio v. Borough of Nescopeck, 34 F. Supp. 2d 256, 265 (M.D. Pa. 1999).
3. Dallas's initial motion (Doc. 7) to dismiss is DENIED as moot.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania